



Agenda Date: 09/27/00
Agenda Item: 7-B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

CABLE TELEVISION

| | |
|---------------------------------------|------------------------------------|
| IN THE MATTER OF SAMMONS) | |
| COMMUNICATIONS OF NEW JERSEY, INC.) | |
| (PHILLIPSBURG) GLOBAL SETTLEMENT OF) | |
| FCC FORMS 393, 1200/1205, AND 1210) | |
| USING THE BENCHMARK APPROACH FOR) | <u>ORDER ADOPTING</u> |
| THE APPROVAL OF BASIC SERVICE TIER) | <u>INITIAL DECISION</u> |
| CHANGES AND THE SUBSEQUENT) | |
| MAXIMUM PERMITTED RATES FOR BASIC) | |
| SERVICE AS WELL AS APPROVAL OF THE) | |
| FILING OF FCC FORM 1205 DETERMINING) | DOCKET NOS. CR93110507, CR94060237 |
| REGULATED EQUIPMENT AND) | CR95040156, CR95060278 |
| INSTALLATION CHARGES) | |

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order considers an Initial Decision and stipulation on final rates entered into by Sammons Communications of New Jersey, Inc.-Phillipsburg ("Petitioner"), as well as the Staff of the Board of Public Utilities ("Staff") and the Division of the Ratepayer Advocate ("RPA"), regarding the settlement of all issues relating to Petitioner's Form 393, its subsequent Forms 1200/1205, 1210 and 1205 that were filed with the Board.

By way of background, on July 19, 1994, the Board of Public Utilities ("Board") issued an Order pursuant to the Federal Communications Commission ("FCC") Form 393 process relating to the cable operations of Petitioner. In doing so, the Board approved a basic service tier ("BST") rate, exclusive of franchise fees, of \$8.35 per month.

On August 18, 1994, Petitioner filed an appeal and Request for Emergency Stay of the Board's Order. On December 9, 1996, the FCC's Cable Services Bureau ("CSB") released a Memorandum Opinion and Order ("MO&O") which upheld the Board's Order as it related to the calculation of Petitioner's equipment rates, but remanded back to the Board its calculation of Petitioner's refund liability relating thereto. The CSB also dismissed Petitioner's Request for Emergency Stay as moot, since the MO&O resolved the issues presented in the appeal.

On August 15, 1994, pursuant to 47 U.S.C. § 543 et seq., and N.J.S.A. 48:5A-1 et seq. Sammons filed an FCC Form 1200 with the BPU in Docket No. CR94060237 in order to establish its maximum permitted rates ("MPR") for regulated tiers of service in its Phillipsburg cable television system. Said filing was amended on October 21, 1994. The Board is the franchising authority and is certified to regulate basic service rates and associated equipment charges pursuant to 47 C.F.R. § 76.910.

On September 14, 1994, the Board issued an Order tolling the thirty day deadline of 47 C.F.R. § 76.933(a) for an additional ninety days pursuant to 47 C.F.R. § 76.933(b). Furthermore, on November 28, 1994, the Board ordered Sammons to keep an accurate account of all amounts received by reason of the rates in issue for the purpose of calculating appropriate refunds, pursuant to 47 C.F.R. § 76.933(c).

The Board held public hearings around the State beginning January 24, 1994, in an effort to solicit public comment on cable rate regulation of this and other cable companies. Further, the Board permitted written public comments and reviewed complaints filed with the Board in the course of the review.

On January 1, 1995, Sammons implemented revised rates for its Phillipsburg system, but did not file its tariffs therefore until February 20, 1995. Said tariffs were subsequently amended on March 30, 1995. This delayed tariff filing forms the basis of the separate, but related Offer of Settlement in Docket No. CO00090647.

On April 6, 1995, Sammons filed an aggregate FCC Form 1205 with the BPU in Docket No. CR95040156, adjusting the MPRs for regulated equipment and installation services in all of its New Jersey systems. These rates were never implemented, and were only developed to satisfy the FCC's annual filing requirement and to justify the rates that were kept in effect until the system was sold as explained below.

On April 6, 1995, Sammons filed an FCC Form 1210 with the BPU in Docket No. CR95060278, updating the BST MPR for changes in programming and other external costs, channel changes, and inflation.

On February 29, 1996, Sammons discontinued its ownership and operation of the Phillipsburg system and its other New Jersey cable systems pursuant to the Board's Order in Docket No. CM95100503, which approved the transfer of Certificates of Approval and the sales of assets of the Sammons cable systems to the TKR Cable Company and Service Electric Cable T.V., Inc. of Hunterdon ("Service Electric"). In light of this sale and Sammons' appeal of the Board's July 19, 1994 Order in Docket No. CR93110507 concerning its initial rate filing, FCC Form 393, no further action was taken on the Form 1200.

Since passage of the Telecommunications Act of 1996, the current owner, Service Electric, is classified as an unregulated small system operator. Therefore, the rates Service Electric currently charges, and any rates it has charged since acquiring the system on February 29, 1996, are not affected by this stipulation.

Beginning on July 11, 2000, Petitioner and Staff entered into settlement discussions in order to resolve all outstanding issues with Petitioner's filings covering rates in effect from September 1, 1993 to February 29, 1996. From July 11 to July 24, 2000, telephone settlement conferences were held between Board Staff and Petitioner regarding the Forms 393 and 1200 / 1205 since the RPA chose not to be a party to these filings. Thereafter, additional settlement discussions

were held by representatives of the parties, including the RPA, regarding the aggregate Form 1205 filing and the Form 1210 filing. As a result of these discussions, and upon review by Staff and the RPA of the amended forms, supporting documentation and schedules, the parties stipulated to the terms and conditions of a global settlement of the Forms 393, 1200/1205, 1210 and 1205. The terms of the global settlement are as follows: a) Petitioner will pay approximately \$29,802.70 in total refunds, inclusive of interest through September 30, 2000, to resolve all outstanding issues in its filings. Petitioner agrees to remit the entire refund amount to Service Electric who will issue them as a one-time credit on the current subscriber's bills within five days of receiving the Board's Order; b) The bill credit shall be a separate line item, shall be identified as "BPU Refund", and shall be distributed among all current subscribers in the Phillipsburg system during the first billing cycle that occurs no later than 60 days after the receipt of Petitioners' money; c) Service Electric will submit to the Office of Cable Television proof of the refund in the form of a certification signed by an officer of the company, together with a sample customer bill, upon its completion; and d) The basic service rates as set forth in Exhibit 1 of the Stipulation are hereby deemed just and reasonable.

The public notice requirement for the Form 1210, Docket Number CR95060278, was waived by the parties because the rate had been implemented and superseded by subsequent adjustments made by the present owner, Service Electric. It should be noted that, pursuant to the Telecommunications Act of 1996, the Phillipsburg system qualified as a "small system" after the sale and, therefore, was deregulated on February 29, 1996. In addition, since approximately five years have passed, the notice would reflect a lower rate than is presently being charged and would confuse subscribers as well as add an undue burden on Service Electric.

The Board has reviewed the Stipulation of Settlement and FINDS that it is reasonable, in the public interest and in accordance with the law. Therefore, the Board HEREBY ADOPTS the Stipulation of Settlement (attached hereto) as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

The Board's adoption herein of the Stipulation of Settlement results in finalization of Petitioner's Forms 393, 1200/1205 and 1210 basic service rates for the period from September 1, 1993 to February 29, 1996 and Petitioner's Form 1205 equipment and installation rates for the period from January 1, 1995 to February 29, 1996 and includes the following docketed matters:

| <u>FCC Form</u> | <u>Docket Number</u> |
|-----------------|----------------------|
| 393 | CR93110507 |
| 1200/1205 | CR94060237 |
| 1210 | CR95060278 |
| 1205 | CR95040156 |

The Board HEREBY ORDERS that Petitioner shall: (1) issue a check to Service Electric for the amount of total refunds due to subscribers in the Phillipsburg district pursuant to the Stipulation of Settlement executed on September 8, 2000, within five (5) days of receipt of the Board's Order; and (2) instruct Service Electric to inform subscribers of the reason for the refunds. Said refunds shall be denominated "BPU Refund". The Board FURTHER ORDERS that Service Electric, within 30 days of effectuating the entire refund, certify in writing to the Office of Cable Television, as provided for in the Stipulation of Settlement, that the refunds have been completed.

DATED: October 2, 2000

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
SECRETARY

IN THE MATTER OF
SAMMONS COMMUNICATIONS OF NEW JERSEY, INC.
(PHILLIPSBURG)
FCC FORMS 393, 1200/1205, 1210 AND 1205

DOCKET NOS. CR93110507, CR94060237,
CR95040156, CR95060278

Celeste M. Fasone, Director
Office of Cable Television
State of New Jersey
Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

William H. Furlong, Chief
Bureau of Inspection & Enf.
Office of Cable Television
State of New Jersey
Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

Richard B. Wagenblast
Office of Cable Television
State of New Jersey
Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

Heather Kreager, Esq.
Associate General Counsel
Sammons Corporation
5949 Sherry Lane
Suite 1900
Dallas, Texas 75225

Felicia Thomas-Friel, Esq.
Deputy Attorney General
State of New Jersey
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

Lawanda Gilbert, Esq.
Assistant Deputy Ratepayer Advocate
State of New Jersey
Division of Ratepayer Advocate
31 Clinton Street - 11th Floor
Newark, New Jersey 07102